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FISCAL IMPACT STATEMENT

LS 6891

BILL NUMBER: HB 1579

NOTE PREPARED: Apr 2, 2013

BILL AMENDED: Mar 26, 2013

SUBJECT: Open Container Laws.

FIRST AUTHOR: Rep. Smaltz

FIRST SPONSOR: Sen. Kruse

BILL STATUS: As Passed Senate

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 X FEDERAL

IMPACT: State

Summary of Legislation: This bill specifies that the number of hours of community restitution or service that a person convicted of operating a vehicle while intoxicated must perform are based on an eight-hour day and an average month consisting of 22 workdays.

The bill also specifies that, for purposes of open container laws, the exemption for a person who is in the passenger compartment of a vehicle used to transport passengers for compensation or the living quarters of a house coach or trailer does not apply to the operator of the vehicle.

Effective Date: July 1, 2013.

Explanation of State Expenditures:

Explanation of State Revenues: *Federal Funds:* Indiana will be apportioned \$40.4 M in restricted funds in FFY 2013 (out of the total \$920.7 M from the Federal Highway Administration) as a penalty for not being in compliance concerning requirements for (1) open container laws and (2) minimum penalties for repeat offenders for driving while intoxicated or driving under the influence. These restricted funds may only be used for certain purposes, but not for the construction, reconstruction, maintenance, or other purposes for which the money was originally available.

The Moving Ahead for Progress in the 21st Century Act (MAP-21) provides for the reservation of apportioned federal-aid funds to:

- (1) alcohol-impaired driving programs, or

(2) Highways Safety Improvement Program-eligible activities.

One of the requirements of the alcohol-impaired driving programs is that at least 40% of the funds be spent by or for the benefit of political subdivisions. It is unknown whether this requirement would result in a required transfer of funding to local units.

This penalty is equal to 2.5% of the National Highway Performance Program and the Surface Transportation Program allocation to the state for the fiscal year in which the state is noncompliant. The penalty is applied separately for each section in which the state is noncompliant.

The penalty is assessed on October 1 and applies until the following October 1. If a state makes a law change midyear and the change is accepted by the Federal Highway Administration (FHWA) as correcting a noted problem, the state will wait until the following October 1 for full funding.

In October 2012, Indiana was found to be noncompliant with the open container law requirements of 23USC 154 and of the minimum penalties for repeat offenders for driving while intoxicated (DWI) or driving under the influence (DUI), 23 USC 164. [A previous notification dated August 3, 2012, did not include Indiana in the list of states to be apportioned.] The \$40.4 M penalty is two penalties of 2.5% for each requirement that is unmet.

According to INDOT, FHWA indicated that Indiana's current open container law does not specifically disallow an operator in a vehicle meant to transport other passengers (i.e., bus, taxi, or limo driver) from having an open container. Additionally, Indiana's community service hours for repeat DWI and DUI offenders are based on a 30-workday month and a six-hour day, but FHWA requires the penalty to be based on a 30-workday month and an eight-hour day. INDOT believes the changes to existing statute in the bill will comply with the federal requirements on the open container issue but not on the community service hours issue. Therefore, according to INDOT Indiana may be penalized \$20.2 M instead of the full \$40.4 M.

Explanation of Local Expenditures: The bill clarifies that the number of hours of community restitution or service for persons convicted of operating a vehicle while intoxicated are based on an 8-hour day and an average month containing 22 workdays. First convictions constitute 180 days of community restitution or service, and second convictions constitute 240 days of community restitution or service.

For FY 2011, the Bureau of Motor Vehicles reports about 12,185 people were found guilty of operating a vehicle while intoxicated, but it is unknown how many citations were for a second offense.

Explanation of Local Revenues:

State Agencies Affected: INDOT.

Local Agencies Affected: Political subdivisions.

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